



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Green River District Office

170 South 500 East

Vernal, UT 84078

<http://www.blm.gov/ut/st/en/fo/vernal.html>



DATE STAMPED 2 LINES BELOW HEADER

IN REPLY REFER TO:
1541 (UTG010)

Memorandum

To: Administrative Record

From: Richard Rymerson
District Manager, Green River District

SUPERVISORS	INITIAL
Field Manager	
Lands & Minerals	
NEPA	

Subject: Memo to the File Regarding the various points in the June 19, 2015 letter from Bret Sumner and Jim Martin Regarding the Greater Monument Butte Final EIS

Background: In a memo dated May 15, 2015, BLM received from the EPA several suggested enhanced mitigation measures which they believed would address their air quality concerns for the Newfield Monument Butte project. BLM provided EPA's suggested measures to Newfield, and requested that Newfield provide any technical or economic details they may have relating to those measures. The June 19, 2015 letter from Bret Sumner and Jim Martin transmitted Newfield's requested technical and economic information, which BLM considered when preparing our July 17, 2015 response to EPA's May letter.

The June 19, 2015 letter also contained several statements which inaccurately characterize the coordination processes between the EPA and the BLM for the Newfield Monument Butte EIS. This memo documents for the file corrections and clarifications regarding those processes.

1. EPA inappropriately provided additional comments after the close of the DEIS comment period.
 - Response: The BLM hosted a May 6, 2015 Utah BLM Air Resource Technical Advisory Group meeting, one topic of which was the Monument Butte project and the "review and discussion of controls/mitigation for Chapita Wells and Monument Buttes". The May 15, 2015 memo that BLM received from the EPA contains EPA's official comments on that agenda item.
2. Nothing has changed since the DEIS so EPA should have and could have provided these comments during review of DEIS.
 - Response: This is not correct. The DEIS did not include ozone modeling, and instead

included an adaptive management commitment to complete ozone modeling within one year of the ROD and apply enhanced mitigation measures if the modeling indicated they were necessary to prevent adverse ozone impacts. The modeling platform BLM and EPA agreed to use was completed sooner than expected, so the BLM elected to complete the ozone modeling for the Monument Butte project between Draft and Final EIS. EPA's May 15, 2015 comments recommend additional mitigation based on review of the new ozone modeling results, in order to minimize or prevent predicted adverse ozone impacts.

3. EPA should have provided an analysis of the cost effectiveness and technical feasibility of the additional mitigation measures before requiring them.

➤ Response: NEPA doesn't require this type of analysis, and the assertion confuses EPA's regulatory processes for establishing Clean Air Act requirements with EPA's NEPA role. EPA's brainstormed list of mitigation measures was provided in a collaborative spirit pursuant to the AQ MOU, and EPA has indicated that they generally anticipated the measures would be feasible and useful for this type of project. Determining the cost effectiveness and technical feasibility is in the purview of the BLM and the project proponent when they select which mitigation measures to commit to/require under NEPA. BLM solicited Newfield's feedback regarding their perspective of the technical and economic feasibility of the suggested measures prior to making an implementation decision. BLM's decision did contain a suite of responses including rejecting some of the measures for feasibility reasons, modifying some of the measures to improve feasibility or effectiveness, and accepting some of the measures as suggested. BLM has also developed an estimate of the effectiveness of the measures, which has been incorporated into the EIS.

4. EPA has unlawfully conflated its NEPA responsibility and regulatory authority. EPA is using NEPA to impose basin-wide requirements that can't lawfully be achieved without a SIP/FIP, and should instead wait for a non-attainment designation.

➤ Response: EPA's comment memo was limited to project-specific recommendations to reduce predicted ozone impacts from the Monument Butte project. Both BLM and EPA recognize that NEPA and Clean Air Act have separate authorities and separate timelines. EPA's comments were provided to the BLM in the context of NEPA as a cooperating agency with special expertise over air quality, and in the context of the AQ MOU as a technical advisor in the BLM's Air Resource Technical Advisory Group. Under the Clean Air Act, EPA must wait until after adverse air quality impacts have already triggered regulatory responses before measures can be implemented to address the problem. However, NEPA is intended to encourage the Federal government to consider adverse impacts in advance of their occurrence, and make informed decisions that avoid unnecessary or undue degradation.

5. The mitigation measures recommended by EPA go beyond what is required by the CAA, and inasmuch as they require controls of existing emission sources, go beyond what is allowable under NEPA.

➤ Response: Mitigation measures considered in a NEPA analysis are not limited to measures required by existing regulation. This is one of the benefits of NEPA as a planning tool for environmentally responsible decision making. In this spirit, EPA recommended enhanced mitigation measures for BLM's consideration. BLM recognizes that we are not an air quality regulatory agency, and as such we cannot require conformance with standards that exceed

those set by regulation. BLM reviewed the proposed measures with that limitation in mind before we decided which measures would be incorporated into the EIS. Additionally, in the past as well as for this project, BLM has successfully coordinated with the proponent to incorporate additional applicant committed measures that exceed regulatory requirements, resulting in a reduction of anticipated impacts beyond what could be achieved by current regulation alone.

6. EPA is trying to short-cut the regulatory processes that are in place to address air quality concerns.

➤ Response: EPA indicated that they are confident that current models forecast the direction air quality is taking accurately, and those models show that the Uinta Basin air-shed currently has issues. EPA stated it is not sound to move forward with projects that will contribute to impacts that may contribute to a non-attainment designation without attempts to minimize those impacts. However, EPA indicated they recognize their authority confines. Similarly, the BLM recognizes we have no legal authority or obligation to manage for non-attainment prior to such designation.

7 – The BLM is not required by the AQ MOU process to formulate and adopt a complete mitigation plan in NEPA.

➤ Response: As stated in the June 19, 2015 letter, the MOU does address the process for developing reasonable mitigation and control measures consistent with NEPA and case law. NEPA and FLPMA also encourage minimization of impacts through mitigation measures. Also, BLM has a regional mitigation policy. BLM has followed these processes while determining which mitigations should be included in the EIS.

8 – BLM has statutory authority under FLPMA and MLA to determine which mitigation measures should be included in a ROD. EPA is restricted to collaboration under NEPA and implementation of appropriate permit conditions under the CAA.

➤ Response: EPA is granted the authority under the CAA and subsequent case law to provide mission oriented federal agencies with access to environmental expertise in order to give adequate consideration to environmental factors.



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Memorandum

To: Title, State
Attention: (name) (use if internal, but not BLM)

From: (name)
(title)

Subject: (capitalize all major words)

Body of memo...

Enclosure(s)

cc: